

**Letter of Findings: 02-20200373**  
**Indiana Corporate Income Tax**  
**For the Tax Period April 1, 2018 to March 31, 2019**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

The Department agreed with out-of-state Technology Company that an assessment of additional 2019 corporate income tax was unwarranted because Technology Company had sufficient Net Operating Losses to offset the liability.

### ISSUE

#### I. Indiana Corporate Income Tax - Net Operating Loss Calculation.

**Authority:** IC § 6-3-1-3.5; IC § 6-8.1-5-1(c); Income Tax Information Bulletin 116 (December 26, 2016 (retroactive)); *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that the Department's assessment of additional corporate income tax was unwarranted because Taxpayer had Net Operating Losses available to offset the assessment.

### STATEMENT OF FACTS

Taxpayer is an out-of-state technology company which files Indiana tax returns. Taxpayer filed a corporate income tax return (IT-20) for the period April 1, 2018 to March 31, 2019.

On the return, Taxpayer claimed approximately \$3.5 million dollars in Net Operating Losses (NOLs). The Department reviewed the return and disagreed with the amount of NOLs claimed. Instead, the Department allowed approximately \$7,000 in NOLs.

The Department's adjustment resulted in an assessment of additional income tax with the Department issuing a proposed assessment of approximately \$230,000.

Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

#### I. Indiana Corporate Income Tax - Net Operating Loss Calculation.

### DISCUSSION

The issue is whether Taxpayer has provided documentation sufficient to establish that the assessment of additional tax was wrong because the Department miscalculated the amount of NOLs available to offset any additional tax liability.

IC § 6-3-1-3.5 permits Indiana taxpayers to claim NOLs based on "the taxpayer's federal net operating loss for a taxable year as calculated under Section 172 of the Internal Revenue Code, adjusted for certain modifications required by [IC 6-3-1-3.5](#) . . . ."

Indiana's NOL modifications are explained in Income Tax Information Bulletin 116 (December 26, 2016 (retroactive)); January 1, 2018 (retroactive)) 20180829 Ind. Reg. 045180354NRA.

Notwithstanding the federal changes to net operating losses (generally, 80[percent] of taxable income and an unlimited carryforward period), Indiana will continue to allow net operating losses to be deducted up to 100[percent] of Indiana adjusted gross income. In addition, Indiana will continue to have a 20-year carryforward of net operating losses from a given year. Finally, Indiana will continue to not permit net operating loss carrybacks.

For all taxpayers, the net operating loss calculation will follow the federal net operating loss calculation, with the modifications in [IC 6-3-1-3.5](#) used to increase or decrease the Indiana net operating loss (prior to any apportionment or allocation). However, any deductions under [IC 6-3-2](#) are not permitted in determining net operating losses.

Taxpayer maintains that the pending assessment was "wrong" because the Department failed to include losses accrued prior to March 31, 2014. As explained by Taxpayer:

In 2015, the Indiana Department of Revenue audited Taxpayer's Indiana corporate tax returns for the periods ended 3/31/2012, 3/31/2013 and 3/31/2014 . . . . [T]he auditor expanded the scope of the audit to include previous years as a result of [an] incorrect apportionment calculation. The scope was expanded to all tax years from which NOLs were eligible to be carried forward, with all tax years examined from the tax period ended 3/31/2005 through the tax period ended 3/31/2014. At the completion of the audit, the Indiana auditor provided an NOL schedule that was updated for the correct apportionment calculation. This NOL schedule was subsequently updated and recalculated by Taxpayer as a result of amended Federal income tax returns due to an Advanced Pricing Agreement (APA) agreed to by the Internal Revenue Service.

Taxpayer argues the 2019 return and the NOL schedule were correct as originally filed and "respectfully request[s] that the notice be cleared and that the Taxpayer's account be placed back in good standing." The gist of Taxpayer's argument is that it had approximately \$24 million in NOLs as of March 31, 2014 and that these NOLs were not recognized by the Department when it adjusted the 2019 return.

As with any assessment, it is Taxpayer's responsibility to establish that this particular tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

In making its case, each taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing . . . [courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, informed and reasonable interpretations of Indiana tax law contained within this decision are entitled to deference.

A review of the Department's 2010 through 2014 audit report confirms Taxpayer's argument that it had approximately \$24 million dollars in NOLs available to carry forward. This additional information confirms Taxpayer's argument that the 2019 assessment was attributable to the Department's error in failing to consider these NOLs in its review of the 2019 return.

As a result of this decision, the Department's Audit division will verify Taxpayer's NOL calculations as explained in the original protest letter and in this Letter of Findings. To the extent that the Department failed to include the \$25 million dollars in NOLs specified in the 2010 through 2014 audit report, Taxpayer's protest is sustained.

### FINDING

Subject to the Department's review and verification of Taxpayer's complete NOL schedule, Taxpayer's protest is sustained.

February 12, 2021

*Posted: 04/28/2021 by Legislative Services Agency*

